

# MICHIGAN PROBATE JUDGES ASSOCIATION

324 N. Pine St., #1  
Lansing, Michigan 48933  
Message Relay No.: (517) 482-7534

## EXECUTIVE COMMITTEE

Hon. FREDERICK R. MULHAUSER  
President

Hon. FREDDIE G. BURTON, JR.  
President-Elect

Hon. SUSAN L. RECK  
Vice-President

Hon. THOMAS E. SHUMAKER  
Treasurer

Hon. JACK T. ARNOLD  
Secretary

Hon. WALTER A. URICK  
Presiding Judge

Hon. KATHRYN J. ROOT  
Immediate Past President

## AT LARGE MEMBERS

Hon. WILLIAM W. CARMODY  
Hon. JOHN A. HOHMAN, JR.  
Hon. JOHN N. KIRKENDALL

## REGIONAL ASSN. PRESIDENTS

Hon. DAVID J. SZYMANSKI  
Southeastern

Hon. JACK T. ARNOLD  
Central

Hon. KENNETH L. TACOMA  
Top of Michigan

Hon. MICHAEL J. ANDEREGG  
Upper Peninsula

Hon. GRAYDON W. DIMKOFF  
Southwestern

Hon. EUGENE I. TURKELSON  
Editor of INTER-COM

Hon. Clifford W. Taylor  
Chief Justice  
Michigan Hall of Justice  
PO Box 30052  
Lansing, MI 48909

October 25, 2005

Dear Chief Justice Taylor,

I am writing on behalf of the Michigan Probate Judges Association to share Association comments and concerns regarding proposed court rule changes considered in ADM 2005-2.

The enclosed comments detail MPJA analysis and recommendations regarding the proposed implementation of a privacy policy which would place a substantial burden on court resources. Members of our association have engaged in extensive and thoughtful analysis of the proposed changes since they will be responsible for implementation of any new rules and are in the best position to understand the impact of proposed changes on litigants and on the court system.

Michigan Probate Judges Association urges the court to carefully consider the proposed changes in light of the enclosed comments. Our association is available to respond to any questions or provide additional information if needed.

Sincerely,

Frederick R. Mulhauser,  
President

**MICHIGAN PROBATE JUDGES ASSOCIATION  
COMMENTS ON ADM 2005-2**

The Supreme Court is proposing that the trial courts implement a privacy policy consistent with 2004 PA 454 although the legislature appears to have exempted trial courts from the Act's requirements. While the Michigan Probate Judges Association ("MPJA") has no objection to requiring trial courts to develop privacy policies, MPJA believes that a strict application of 2004 PA 454 may lead to insurmountable administrative burdens that will impair the ability of probate courts to carry out their main mission. MPJA respectfully suggests that the Supreme Court tailor the principles of the Privacy Act to the work of the trial courts.

The proposed policy can be read to require that social security numbers be redacted from trial court files to protect the number from being copied. This seemingly minor proposal would require a substantial diversion of resources from existing demands on the trial courts. Each time a request is made to access a file, the clerk would need to inspect the file for the presence of a social security number so that it could not be copied. Multiplying this task by the many times files are produced every day in every trial court in this state would create unprecedented demands on staff that would prevent them from carrying out their primary duty. As to those files on microfilm, is it even technically possible to redact social security numbers? Additionally, those courts that have court records available online may have even greater difficulty redacting from electronic images. MPJA would urge that redacting requirements be deleted. The better approach is to continue to modify SCAO forms so as not to demand social security numbers and to authorize, not require, trial courts to redact social security numbers from existing files. Over time this process will obtain the same benefit without disruption of service to the public.

At the same time, the Supreme Court needs to be careful in requiring the filing of documents which are likely to contain sensitive financial data. For example, the Supreme Court is presently considering ADM 2004-54 which may require the filing of death certificates, verifications of deposit and financial statements, all of which contain sensitive information, including social security numbers. Additionally, the privacy policy should not apply to deceased persons since 2004 PA 454, by its express terms, does not apply to deceased persons.

Further, MPJA feels, as it did in its comments to ADM 2004-42, that a punitive approach to addressing breaches of the privacy policy is misplaced. Rather than focus on punishment, MPJA would urge the Supreme Court to focus on process improvement. MPJA recommends that paragraph B (4) be deleted.

Finally, the reference to MCR 2.612(A)(1) seems misplaced. The rule refers to motions, not requests, and deals with "clerical mistakes". The better approach would be a new rule to cover requests for redaction or modify MCR 8.119(F).